

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO. 1:18-cv-507

KATHRYN MCHUTCHISON	)	<b>NOTICE OF REMOVAL</b>
	)	(Diversity of Citizenship
Plaintiff,	)	28 U.S.C. §§ 1332, 1441 & 1446)
v.	)	
	)	Removed from Superior Court of
SPENCER SCHAR,	)	Durham County, NC
	)	(Case No. 18-CVS-2943)
Defendant.	)	

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Defendant Spencer Schar, through counsel, hereby removes this action from the Superior Court of Durham County, North Carolina to the United States District Court for the Middle District of North Carolina pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. As grounds for this removal, Defendant Schar shows the Court as follows:

1. On May 30, 2018, Plaintiff Kathryn McHutchison filed her Complaint in the General Court of Justice, Superior Court Division, Durham County, North Carolina, as Civil Action No. 18-CVS-2943. True and correct copies of the Complaint and the Civil Summons, which was also issued on May 30, 2018, are attached hereto as Exhibits 1 and 2, respectively.

2. In her Complaint, Plaintiff alleges claims for battery, assault, and negligence.

3. Schar, through his undersigned counsel, received copies of the Civil Summons and Complaint via email on June 4, 2018. Pursuant to an agreement between counsel for the parties, undersigned counsel for Schar signed and submitted an Acceptance

of Service document on June 5, 2018. That Acceptance of Service is attached as Exhibit 3.

4. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) because 30 days have not elapsed since the Summons and Complaint were received by Schar.

5. Upon information and belief, at the time this action commenced, Plaintiff was, and still is, a citizen and resident of North Carolina.

6. At all relevant times, Spencer Schar has been a citizen and resident of Palm Beach, Florida (Palm Beach County). A Declaration from Defendant Schar regarding his Florida citizenship and residency, as well as the money damages sought by Plaintiff, is filed contemporaneously herewith (“Schar Decl.”).

7. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332. This lawsuit is a civil action where the parties are citizens of different states, and in which Plaintiff seeks money damages in excess of \$75,000.

8. Without admitting the validity of any of the Plaintiff’s claims or any liability for any of the amounts set forth therein, the allegations in the Complaint involve a claim in excess of \$75,000. More specifically, Plaintiff claims in her Prayer for Relief in her Complaint that her total damages exceed \$25,000 (since Plaintiff’s claims includes ones for negligence and punitive damages, North Carolina Rule of Civil Procedure 8(a)(2) precludes Plaintiff from stating the full amount she seeks to recover in her complaint).

Plaintiff also seeks to recover punitive damages, as well as attorneys' fees and all costs, expenses and interest as may be allowed by law.

9. Moreover, before Plaintiff filed her Complaint, Plaintiff provided a written settlement demand letter to Schar, demanding that Schar pay Plaintiff well over \$75,000 in exchange of Plaintiff's agreement to not file the claims Plaintiff asserted in her Complaint. (Schar Decl. ¶ 8).

10. Pursuant to 28 U.S.C. §1441(a), this action may be removed to this Court because it is the District embracing Durham County, North Carolina, in which this action was pending before this Removal.

11. Copies of all process, pleadings and orders served upon Schar or filed in this action pending in Durham County Superior Court are attached hereto as Exhibits 1 (Complaint), 2 (Summons), 3 (Acceptance of Service), 4 (Civil Cover Sheet), 5 (Civil Receipting).

12. Written notice of the filing of this Notice of Removal will be provided to Plaintiff, together with a copy of this Notice of Removal and supporting papers. Pursuant to 28 USC § 1446(d), the foregoing will be filed with the Superior Court of Durham County, North Carolina.

WHEREFORE, Defendant Spencer Schar respectfully requests that the above entitled action be removed to the United District Court for the Middle District of North Carolina pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

Respectfully submitted, this the 15th day of June, 2018.

BROOKS, PIERCE, McLENDON,  
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*Attorneys for Defendant Spencer Schar*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **NOTICE OF REMOVAL** has been electronically filed using the CM/ECF system, and the following parties were served by 

electronic mail as follows:
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This the 15th day of June, 2018.

BROOKS, PIERCE, McLENDON,  
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